

ESTTA Tracking number: **ESTTA688678**

Filing date: **08/10/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057941
Party	Defendant Barnaby Heating & Air
Correspondence Address	JULIE CELUM GARRIGUE CELUM LAW FIRM PLLC 11700 PRESTON RD, SUITE 660 PMB 560 DALLAS, TX 75230 UNITED STATES jcelum@celumlaw.com
Submission	Reply in Support of Motion
Filer's Name	Julie Celum Garrigue
Filer's e-mail	jcelum@celumlaw.com
Signature	//JULIE CELUM GARRIGUE//
Date	08/10/2015
Attachments	8.10.2015 REPLY to CROSS-MSJ.pdf(1611341 bytes)

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

Clockwork IP, LLC)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92057941
)	
Barnaby Heating & Air, LLC)	
)	
Respondent.)	

**REGISTRANT’S/RESPONDENT’S REPLY TO PETITIONER’S OPPOSITION TO
RESPONDENT’S CROSS-MOTION FOR SUMMARY JUDGMENT**

Registrant/Respondent, Barnaby Heating & Air, LLC (herein “Respondent” and “Barnaby”), by counsel, states the following in Reply to Petitioner’s Opposition to Respondent’s Cross-Motion for Summary Judgment. Petitioner’s claims of likelihood of confusion and fraud, as filed before the Trademark Trial and Appeal Board, are barred by law and Respondent’s cross motion for summary judgment should be granted.

ARGUMENT

This cancellation action is barred from proceeding based upon the contract between the parties. (Dkt. #30, Exhibit 7 to Barnaby Decl. and ¶12.) The Member Agreement between Respondent and Petitioner, by Petitioner's own judicial admission, as the owner of AirTime 500, required Petitioner to file this action in a state or federal Court within Missouri. (*Id.*)

7. This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict of laws principles. Any action arising out of or relating to this Agreement will be brought by the parties only in a Missouri state court or a federal court sitting within Missouri, which will be the exclusive venue of any such action. Each party waives any objection to the laying of venue of any such action, and irrevocably consents and submits to the jurisdiction of any such designated court (and the appropriate appellate courts) in any such action. Service of process and any other notice in any such action will be effective against such party when transmitted in accordance with the notice requirements set forth above. Nothing contained herein will be deemed to affect the right of a party to serve process in any manner permitted by law.

(Exhibit D at ¶7 of Dkt. # 1 at ¶11, Dkt. #30, Exhibit 7 to Barnaby Decl. and ¶12.)¹

March 11 - 15, 2008 in St. Louis, Missouri. (Pet's Mot., Dkt # 22 at Exhibit 6 of DeFord Decl. at ¶7).

Petitioner moves to cancel Respondent's COMFORTCLUB mark, claiming that by the parties' entering into the 2007 Member Agreement, Respondent was granted a non-exclusive license for use of the COMFORTCLUB mark, and that because Respondent violated its obligations under the Agreement, Petitioner was forced to bring the current cancellation proceeding. *See* Dkt. #1, Dkt. #22, and Dkt. #32.

¹ This contractual provision, alone, mandates the Board's denial of Petitioner's Motion for Summary Judgment on its fraud claim, and mandates the Board's dismissal of Petitioner's Petition to Cancel. Respondent has filed a cross-motion for summary judgment herewith on its pleaded affirmative defenses of failure to state a claim and contract estoppel, *et al.*

Respondent denies that Petitioner ever owned the COMFORTCLUB mark, or that Respondent was ever using Respondent's COMFORTCLUB mark under any kind of license from Petitioner. *See* Exhibit 1, a true and accurate copy of the Supplemental Declaration of Charles Barnaby, August 10, 2015, at paras. 6, 20, 22, 24. Respondent admits that it entered into the Member Agreement with Petitioner's subsidiary, AirTime 500, LLC, and that the 2007 Member Agreement controls Petitioner's and Respondent's obligations, and is currently in effect. *See id.* Barnaby Decl. at para. 11. Respondent denies that it entered into any oral or written licensing agreement with Petitioner, other than the 2007 Member Agreement. *Id.* The only other licensing agreements to which Respondent was a party are from 2008 for use of AirTime 500, LLC's and Clockwork Home Services, Inc.'s GREEN SCREEN and TECHNICAL SEAL OF SAFETY marks. *See Exhibit 1*, Barnaby Decl. at paras. 9-14.

As a matter of law, Petitioner is contractually estopped from bringing the current cancellation proceeding against Barnaby for the cancellation of Respondent's COMFORTCLUB registration. *See M-5 Steel Mfg. Inc. v. O'Hagin's Inc.*, 61 USPQ2d 1086 (TTAB 2001) (and cases cited therein, enforcing contractual provisions of settlement agreements between parties). The issue of whether Petitioner is contractually barred from bringing its cancellation proceeding at the Trademark Trial and Appeal board clearly falls within the jurisdiction of this Board. *See Kimberly-Clark Corp. v. Fort Howard Paper Co.*, 772 F.2d 860, 227 USPQ 36 (Fed. Cir. 1985). The Board can give effect to an agreement to the extent that the agreement is relevant to issues properly before the Board. *See Selva & Sons, Inc. v. Nina Footwear, Inc.*, 705 F.2d 1316, 217 USPQ 641 (Fed. Cir. 1983). As explained in Respondent's Cross-Motion for Summary Judgment, and cases set forth below, this case presents issues squarely within the parameters of the 2007 Member Agreement and Petitioner's instant Petition to Cancel should be dismissed.

The construction of an agreement is a question of law, and the Board may resolve the meaning and interpretation of a contract on summary judgment. *See Interstate Gen. Gov't Contractors, Inc. v. Stone*, 980 F.2d 1433 (Fed. Cir. 1992). The Agreement between the parties' contains a non-objectionable, non-waivable, choice of law clause. (*See* Dkt. #30 Barnaby Decl. at Exhibit 7 and para. 12). In interpreting contracts, "unless a different intention is manifested, ... where language has a generally prevailing meaning, it is interpreted in accordance with that meaning." *See* Restatement (Second) of Contracts, § 202(3)(a) (2014). Thus, the interpretation of an agreement must be based, not on the subjective intention of the parties, but on the objective words of their agreement. *See Novamedix Ltd. v. NDM Acquisition Corp.*, 166 F.3d 1177, 49 USPQ2d 1613 (Fed. Cir. 1999).

The Agreement clearly provides that the parties agreed that any claims "arising out of or relating to this Agreement" will be brought by the parties only in a Missouri state court or a federal court sitting within Missouri. The Agreement also clearly indicates that each party waives any objection to the laying of venue of any such action, and irrevocably consents and submits to the jurisdiction of any such designated court. It logically follows that any claim brought by Petitioner against Respondent should have been brought in a court sitting within the boundaries of the State of Missouri. Federal district courts and the Trademark Trial and Appeal Board are appropriate forums to challenge pending and existing registrations of federal trademarks, and both forums routinely decide likelihood of confusion claims brought pursuant to the Lanham Act. *See B&B Hardware, Inc. v. Hargis Industries, Inc.* 575 U.S. ____ (Opinion of the Court at pgs. 4-6) (2015). Thus, Petitioner could have asserted its claims against Respondent for fraud and for the likelihood of confusion via a complaint filed in a federal district court sitting within the boundaries of the state of Missouri. Petitioner cannot have it both ways. It cannot seek to enforce

only those contractual provisions that support its claims, and disregard those contractual provisions that do not support its claims. Here the Agreement between the parties is clear – any dispute arising from or related to the Member Agreement should have been brought in Missouri.

Petitioner is contractually estopped from pursuing this cancellation. Clearly, this case arises from the parties contractual relationship and any and all claims arising from – or related to - the Agreement – should have been brought in a State or Federal Court in Missouri. (Dkt. #30, Exhibit 7 to Barnaby Decl. at 12.) To otherwise permit Petitioner to move forward with this cancellation proceeding would undermine the intent of the parties' agreement and create an environment of uncertainty regarding each party's respective rights pursuant to the Agreement. (*Id.*) Therefore, as a matter of law, Petitioner is contractually estopped from bringing the current cancellation proceeding seeking to cancel Barnaby's COMFORTCLUB registration. Respondent's cross motion for summary judgment should be granted and Petitioner's cancellation proceeding should be dismissed with prejudice.

CONCLUSION

Respondent asks the Board to find that Respondent has alleged with sufficient particularity facts which, if proven at trial, would establish that Petitioner's claims are barred based upon the contractual agreement between the parties, grant Respondent's cross-motion for summary judgment, and dismiss Petitioner's cancellation petition.

Barnaby Heating & Air, LLC

// Julie Celum Garrigue //
JULIE CELUM GARRIGUE

Celum Law Firm, PLLC
11700 Preston Rd.
Suite 660, PMB 560
Dallas, Texas 75230
P: 214.334.6065
F: 214.504.2289
E: Jcelum@celumlaw.com

Counsel for Respondent,
Barnaby Heating & Air, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENT'S REPLY IN SUPPORT OF ITS CROSS-MOTION FOR SUMMARY JUDGMENT** was filed on August 10, 2015 and forwarded to counsel for Petitioner and counsel for Co-Respondent, this 10th day of August 2015, by email and by sending the same via first class mail:

Brad R. Newberg
McGuireWoods, LLP
1750 Tysons Boulevard
Suite 1800
Tysons Corner, VA 22102-4215
T: 703.712.5061 (Direct Line)
F: 703.712.5187
Email: bnewberg@mcguirewoods.com

Counsel for Petitioner,
Clockwork IP, LLC

Melissa Replogle, Esq.
Replogle Law Office, LLC
2312 Far Hills Ave., #145
Dayton, OH 45419
T: 937.369.0177
F: 937.999.3924
Email: melissa@reploglelawoffice.com

Counsel for Co-Respondent,

McAfee Heating & Air Conditioning, Inc.

// Julie Celum Garrigue //
JULIE CELUM GARRIGUE

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 3,618,331

Registration Date: May 12, 2009

Mark: COMFORTCLUB

Clockwork IP, LLC)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92057941
)	
BARNABY HEATING & AIR, LLC)	
)	
Respondent.)	

SUPPLEMENTAL DECLARATION OF CHARLES BARNABY

“I Charles Barnaby declare under penalty of perjury that the foregoing is true and correct.

1. I am the President of Barnaby Heating & Air, LLC (“Barnaby”) located in Rowlett, Texas.
2. I have reviewed the July 24, 2015 Supplemental Declaration of Rick Yohn submitted in support of Clockwork’s Reply to its Motion for Summary Judgment.
3. I received Mr. Yohn’s Supplemental Declaration on July 28, 2015. Prior to July 28, 2015, I had never seen the forms that are attached as “Exhibit A” to Mr. Yohn’s Supplemental

Declaration. AirTime 500 members did not have access to and did not purchase the same types of marketing materials that a One Hour Air Conditioning & Heating franchisee might purchase.

4. The forms attached as “Exhibit A” to Mr. Yohn’s Supplemental Declaration are not materials that Barnaby, a former AirTime 500 member, would have ever been provided, because, as set forth in my July 9, 2015 Declaration, I never attended a seminar on behalf of Barnaby where One Hour Air Conditioning & Heating franchisees were present.

5. A true and accurate sample of the form that Barnaby and other AirTime 500 members were provided is attached hereto as **Exhibit A**. A quick review of the AirTime form substantiates what I have sworn to throughout the pendency of this case, that the words “COMFORT and/or CLUB” do not appear on the form attached as **Exhibit A**.

6. Barnaby began using its COMFORTCLUB mark in January 2008. At no time during Barnaby’s continued use of its COMFORTCLUB trademark, was Barnaby acting under any type of license with Petitioner. Barnaby has never been a licensee of Petitioner’s.

7. Barnaby has entered into two (2) licensing agreements with AirTime 500, LLC for use of its trademarks. Though I have searched the business records of Barnaby, I have been unable to locate the first licensing agreement that Barnaby entered into with AirTime 500, LLC. As I recall, the first licensing agreement that Barnaby entered into with AirTime 500, LLC was for the trademark GREEN SCREENED. Though I have conducted a thorough search of Barnaby’s business records, I am unable to locate the licensing agreement that controlled Barnaby’s use of the GREEN SCREENED mark.

8. On Wednesday, July 29, 2015, I was able to locate one of the licensing agreements that Barnaby entered into with AirTime 500, LLC. The documents relating to this second license agreement are identified below and were produced to Petitioner on July 31, 2015.

9. On October 2, 2008, Barnaby Heating & Air, LLC entered into a licensing agreement with AirTime 500, LLC for Barnaby's use of the trademark TECHNICIAN SEAL OF SAFETY and attached hereto as **Exhibit B** is a true and accurate copy of the Technician Seal of Safety License Agreement, signed by me on October 2, 2008.

10. The Technician Seal of Safety License Agreement was entered into after I filed Barnaby's application for the registration of Barnaby's COMFORTCLUB mark with the United States Patent and Trademark Office.

11. Just like the August 2007 AirTime 500 Member Agreement [**Exhibit 7** to Barnaby Decl.], Section 15.3 of the Technician Seal of Safety License Agreement, also contains a provision that any action arising out of the agreement shall be governed by the laws of the State of Missouri and shall be brought in a state or federal court located within the State of Missouri.

12. Attached hereto as **Exhibit C** is a true and accurate copy of correspondence from AirTime 500, LLC's, Ms. Patty Myers, setting forth the steps that an AirTime 500 member, such as Barnaby Heating & Air, LLC, was required to take in order to obtain a license to use the TECHNICIAN SEAL OF SAFETY trademark.

13. Following my submission of the signed License Agreement on Barnaby's behalf, I received the October 7, 2008 correspondence attached hereto as **Exhibit D** from AirTime 500, LLC's, Patty Myers. **Exhibit D** is a true and accurate copy of the October 7, 2008 correspondence from AirTime 500, LLC to Barnaby Heating & Air, LLC regarding the Licensing Agreement Requirements for Barnaby's use of the Technician Seal of Safety™ trademark.

14. **Exhibits B, C and D**, are substantially similar to the type of licensing agreement

Barnaby was provided for its use of the GREEN SCREENED trademark. AirTime 500 required AirTime 500 members to sign these types of licensing agreements whenever a member desired to use an AirTime 500 trademark.

15. As set forth in my July 9, 2015 Declaration, Barnaby paid AirTime 500 over \$150,000 in membership fees over the course of seven years while Barnaby was an AirTime 500 member.

16. AirTime 500 and Clockwork Home Services, Inc. were very particular about issuing written licenses for the use of its intellectual property. Had AirTime 500 or Clockwork IP actually been using the COMFORTCLUB mark before Barnaby Heating & Air, LLC began using the COMFORTCLUB mark, AirTime 500 or Clockwork IP would have required that Barnaby Heating & Air, LLC enter into a written licensing agreement for Barnaby's use of the COMFORTCLUB mark.

17. The fact that neither AirTime, nor Clockwork, required Barnaby to enter into an oral or written license for Barnaby's use of the COMFORTCLUB mark is further evidence that neither AirTime, nor Clockwork, were using the COMFORTCLUB mark prior to Barnaby's first use in January 2008.

18. Barnaby never saw any materials that indicated that AirTime or Clockwork, or any of their related companies, were using a "COMFORT CLUB" mark or a "COMFORTCLUB" mark prior to filing Barnaby's registration for its COMFORTCLUB mark.

19. Barnaby never saw any materials indicating that AirTime or Clockwork, or any of their related companies, were using a "COMFORT CLUB" mark or a "COMFORTCLUB" mark following Barnaby's application for registration of its COMFORTCLUB mark, until some time in 2011.

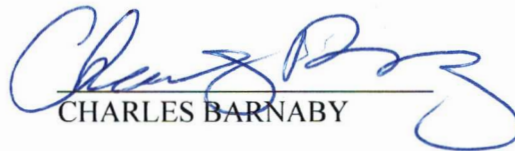
20. The only contractual agreement between Barnaby and Clockwork IP, LLC is the August 2007 Member Agreement.
21. I am the only person who would have entered into a contract with Clockwork IP, LLC on behalf of Barnaby Heating & Air, LLC.
22. I never entered into a licensing agreement with Clockwork IP, LLC, as Clockwork IP, LLC alleges.
23. I was never provided any proposed license agreement from AirTime or Clockwork for Barnaby's use of the COMFORTCLUB trademark.
24. I was never told that Barnaby needed to enter into a licensing agreement for Barnaby's use of the COMFORTCLUB trademark. I was never advised that I was using the COMFORTCLUB trademark as a licensee of AirTime 500, SGI, Clockwork Home Services, Inc., or Clockwork IP, LLC.
25. I provided AirTime 500, LLC with a copy of the first advertisement proof in February 2008 via email, and I was never told by anyone at AirTime 500, or anyone affiliated with AirTime 500, including Petitioner, that Barnaby's use of the COMFORTCLUB mark was in violation of Petitioner's rights.
26. I have never seen any materials indicating that AirTime 500, LLC, Clockwork IP, LLC, or any of its related companies or franchisees, were using the COMFORTCLUB mark prior to the date that I registered the COMFORTCLUB mark.
27. I have never misrepresented any facts to the U.S. Patent & Trademark Office.
28. I would not have filed for registration of the COMFORTCLUB mark if I had believed that AirTime 500 or Clockwork IP, or any related entities were using the mark prior to Barnaby Heating & Air, LLC's use.

29. I have never seen Barnaby's COMFORTCLUB Mark being used by any One Hour Heating & Air Conditioning franchisees within the State of Texas.

30. Neither I, nor anyone on Barnaby's behalf, have committed fraud on the United States Patent & Trademark Office.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true.

EXECUTED on Aug 10, 2015.


CHARLES BARNABY



Service Club Membership Application

3 Regional Options

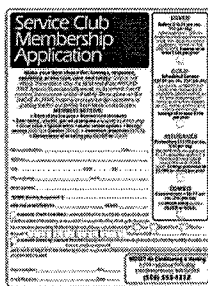
877-227-5462
www.absolinc.com

Club memberships were created exclusively for AirTime 500 members to provide routine maintenance on their HVAC systems and help protect their clients from major service problems. The latest version of club membership provides multiple levels of protection to the customers with discounts and annual inspections to the homeowner. AirTime 500 members realize how beneficial these plans are when protecting the safety and welfare of their customers. Club memberships offer steady cash flow, happier team members, planned growth, and lower marketing costs. In addition, they increase the value of the business and create an excellent place to train future service technicians.

Companion piece and separate enrollment form that is used in conjunction with the Club Membership program.
8 1/2 X 11 invoice, 3-color, 2-part carbonless form.

Region (Required, please choose one)

☐ Region 1 ☐ Region 2 ☐ Region 3



Quantity	Investment	Total
<input type="checkbox"/> 1,000	\$388.00	\$
<input type="checkbox"/> 1,500	\$412.00	\$
<input type="checkbox"/> 2,000	\$435.00	\$
Set Up Fee		\$ 25.00
Shipping & Handling*		
Total		\$

*Shipping is based on UPS Ground service; price may vary depending on the destination address. Additional charges will apply for expedited service.

Please ship order to:

Company Name _____
Address _____
City, State, Zip _____
Phone _____ Fax _____
Email _____
Owner's Name _____

Payment Information:

☐ Credit Card # _____ Exp. Date _____
☐ Check is enclosed (Please make payable to Advantage Business Solutions)
Authorized Signature _____

*Refunds apply if and only when an unopened material can be restocked; this is due to the nature of exclusivity and copyright laws. Defective materials may be exchanged for the same exact material.

PLEASE FAX COMPLETED ORDER FORM TO 615-515-0024

AT5-001

EXHIBIT A

Advantage Business Solutions
6213 Charlotte Avenue, Suite 100, Nashville, TN 37209

Work order # _____ Customer # _____
 Name _____ Date _____
 Address _____
 City _____ State _____ Zip _____
 Home phone _____ Work _____
 E-mail address _____
 Scheduled arrival _____ Actual arrival _____

SYSTEM INFORMATION Age outdoor _____ Age indoor _____

Manufacturer _____

Model # _____

Serial # _____

Condition (#1 best) 1 2 3 4 5 1 2 3 4 5

MorVent Services, Inc. Air Conditioning & Heating

503 N. Walnut Street
Kennett Square, PA 19348

(610) 444-3333

**StraightForward
Pricing™**

5 **Repair, Replace, Install:** In-warranty condenser coil, relocate condensing unit, flue, in-warranty heat exchanger, reversing valve, suction accumulator.

CLUB LEVEL	SILVER	GOLD	PLATINUM
\$890	\$712	Free	Free

Qty _____ X (\$ ea): _____ = _____

4 **Repair, Replace, Install:** O.E.M. motor, O.E.M. burners, primary circuit board, in-warranty compressor, major duct repair, in-warranty evaporator coil, control valve, pump, refrigerant leak search and repair, refrigerant recovery and recharge, suction line dryer.

\$477 \$382 Free Free

Qty _____ X (\$ ea): _____ = _____

3 **Repair, Replace, Install:** Blower fan and pulleys, universal burners, secondary circuit board, universal motor, defrost control board, gas valve, heat strip, igniter, electronic thermostat, furnace rewiring.

\$287 \$230 Free Free

Qty _____ X (\$ ea): _____ = _____

2 **Repair, Replace, Install:** Air balance, blower fan, breaker, clean complete A/C, clean complete furnace, condenser fan blade, contactor, disconnect box, control switch, drain pan, drain line, minor duct repair, flue repair, humidistat, relay, sequencer, shaft and bearings, start kit, timer, UV light bulb, wiring.

\$189 \$151 Free Free

Qty _____ X (\$ ea): _____ = _____

1 **Clean, Adjust:** Blower, breaker, drain, drain line, ignition components, filter, evaporator coil, fins, pilot, vent, thermostat.
Repair, Replace, Install: Air flow switch, capacitor, drain line, filter media cartridge, flame sensor, Freon, glow coil, humidifier pad, pilot, thermocouple, standard thermostat, transformer.

\$99 \$79 Free Free

Qty _____ X (\$ ea): _____ = _____

Qty _____ X (\$ ea): _____ = _____

Qty _____ X (\$ ea): _____ = _____

PAID VIA: _____ Platinum Club _____ Gold Club _____ Cash-check # _____

Diagnosis \$99 \$19.95 Free Free

_____ Visa _____ Mastercard _____ Discover _____ American Express

Total due today _____

CC# _____ Exp. _____

Cardholder & Work Satisfaction signature _____

Technician signature _____

As a trained professional, I recommend the following: _____

Work order # _____ Customer # _____
 Name _____ Date _____
 Address _____
 City _____ State _____ Zip _____
 Home phone _____ Work _____
 E-mail address _____
 Scheduled arrival _____ Actual arrival _____

**Company
Logo**
555-555-5555

SYSTEM INFORMATION

	Outdoor					Indoor				
Manufacturer	_____					_____				
Model #	_____					_____				
Serial #	_____					_____				
Condition (1= best)	1	2	3	4	5	1	2	3	4	5

**StraightForward
Pricing™**

CLUB LEVEL

5 **Repair, Replace, Install:** In-warranty condenser coil, relocate condensing unit, flue, in-warranty heat exchanger, reversing valve, suction accumulator.

	SILVER/GOLD DISCOUNT	SILVER/GOLD COMBO	INSURANCE
\$890	\$712	\$70	\$70

Qty _____ X (\$ ea): _____ = _____

4 **Repair, Replace, Install:** O.E.M. motor, O.E.M. burners, primary circuit board, in-warranty compressor, major duct repair, in-warranty evaporator coil, control valve, pump, refrigerant leak search and repair, refrigerant recovery and recharge, suction line dryer.

\$477	\$382	\$70	\$70
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Qty _____ X (\$ ea): _____ = _____

3 **Repair, Replace, Install:** Blower fan and pulleys, universal burners, secondary circuit board, universal motor, defrost control board, gas valve, heat strip, igniter, electronic thermostat, furnace rewire.

\$287	\$230	\$70	\$70
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Qty _____ X (\$ ea): _____ = _____

2 **Repair, Replace, Install:** Air balance, blower fan, breaker, clean complete A/C, clean complete furnace, condenser fan blade, contactor, disconnect box, control switch, drain pan, drain line, minor duct repair, flue repair, humidistat, relay, sequencer, shaft and bearings, start kit, timer, UV light bulb, wiring.

\$189	\$151	\$70	\$70
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Qty _____ X (\$ ea): _____ = _____

1 **Clean, Adjust:** Blower, breaker, drain, drain line, ignition components, filter, evaporator coil, fins, pilot, vent, thermostat.

\$99	\$79	\$70	\$70
-------------	-------------	-------------	-------------

Repair, Replace, Install: Air flow switch, capacitor, drain line, filter media cartridge, flame sensor, Freon, glow coil, humidifier pad, pilot, thermocouple, standard thermostat, transformer.

Qty _____ X (\$ ea): _____ = _____

Qty _____ X (\$ ea): _____ = _____

Qty _____ X (\$ ea): _____ = _____

PAID VIA: _____ Combo Club _____ Insurance _____ Cash-check # _____
 _____ Visa _____ Mastercard _____ Discover _____ American Express _____

Diagnostic Fee: \$99

Total due today _____

CC# _____ Exp. _____

Cardholder & Work Satisfaction signature _____ Technician signature _____

As a trained professional, I recommend the following: _____

ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.

15.4 If either party to this Agreement breaches or attempts to breach any of the terms hereof, that party shall pay to the non-breaching party upon written demand or as part of a judgment all of the non-breaching party's costs and expenses, including reasonable attorneys' fees, incurred by the non-breaching party in enforcing the terms of this Agreement, whether or not litigation is commenced.

15.5 Following termination of this Agreement and/or the License (for any reason and/or by either party), certain terms, conditions and obligations of this Agreement and any obligations to be performed upon or following any termination of this Agreement and/or the License pursuant to any provision of this Agreement, and any miscellaneous provisions that are relevant to any such obligations, as set forth in this Agreement, will nevertheless survive and continue in full force and effect.

IN WITNESS WHEREOF, the parties have signed this Agreement as of day and year noted below.

LICENSED TRADEMARK.....

TECHNICIAN SEAL OF SAFETY

➔ DATE OF AGREEMENT: 10-2-2008

"MEMBER"		
<u>Barnaby Heating & Air, LLC</u>		
Print Full Name of Corporation or Limited Liability Company, if applicable		

<u>Charles Barnaby</u>		
Signature Of Authorized Officer of Corporation or Limited Liability Company		
<u>Charles Barnaby</u>		
Print Full Name of Authorized Officer of Corporation or Limited Liability Company		

Authorized Signature Of Owner Of Business		
Print Full Name of Authorized Signature Of Owner Of Business		

Authorized Signature Of Co-Owner Of Business		
Print Full Name of Authorized Signature Of Co-Owner Of Business		

<u>4620 Industrial 1 Street HC</u>		
Business Address		
<u>Rowlett</u>	<u>TX</u>	<u>75088</u>
City	State	Zip

"AirTime" AirTime, LLC
By _____ Authorized Signature
Address: 7777 Bonhomme, Suite 1800 St. Louis, Missouri 63105 Attn: Patty Myers Phone: 877-862-8181 Facsimile: 314-862-2314

NOTE: The one-time license fee of \$1.00 per year for the granting of this license will be charged to your account on file with AirTime 500, LLC.

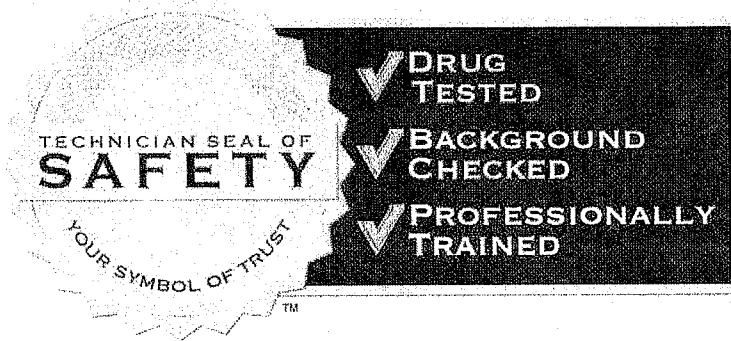
EXHIBIT B

TRANSMISSION VERIFICATION REPORT

TIME : 10/02/2008 09:57
NAME : BARNABY HEATING
FAX : 9724756813
TEL : 9724120150
SER.# : 000H6J555891

DATE, TIME	10/02 09:57
FAX NO./NAME	13147277237
DURATION	00:00:33
PAGE(S)	02
RESULT	OK
MODE	STANDARD
	ECM

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle



How do I obtain the Technician Seal of Safety?

To obtain the Technician Seal of Safety, you must first complete the enclosed licensing agreement. Please read it thoroughly and call if you have any questions. Fax your request to 314-727-7237.

Please Note: You must use the seal the way we have it registered. Be sure you have the "TM" next to the seal so we can continue to protect for all the members.

To obtain the artwork, you must be registered online at www.contractorwizard.com. If you have yet to register, now is the time to access the artwork! Once you have been granted access to this website and have been authorized to use the Technician Seal of Safety, you will be able to download the Technician Seal of Safety artwork and marketing materials. (Please allow 36-48 hours for processing).

If you have any questions, please call a client advisor at 800-524-1954.

Sincerely,

Patty Myers

Patty Myers



You Must be registered on www.contractorwizard.com to have access to the Technician Seal of Safety once you have been approved.

EXHIBIT C

October 7, 2008

Charles Barnaby
Barnaby Heating & Air
4620 Industrial Street, Suite C
Rowlett, TX 75088



RE: Technician Seal of Safety™ Licensing Agreement Requirements

I have received notification that you have entered into a Licensing Agreement with AirTime500 for use of **Technician Seal of Safety™**. I have enclosed the original agreement for your records. In order to maintain compliance, as outlined in the License Agreement, you will need to fulfill the following two requirements and submit proof in one of the manners listed at the end of this letter:

- **Current INSURANCE:** We have received a copy of your Insurance Certificate. Please keep in mind this obligation is an ongoing task and it's your responsibility to make sure it's renewed upon expiration. It should have listed both **AirTime 500** and **Clockwork Home Services, Inc. as additional insured** on your general liability policy with a minimum limit of \$1,000,000 (see Paragraph 5.2 of License Agreement). Submit the insurance certificate once this has been added.
- **PROOF OF USE:** *Prior to* implementing the **Technician Seal of Safety™**, please submit all proofs or samples of how you intend to use the mark (see Paragraph 3.2 of License Agreement) to be sure you are using the trademark in the appropriate way.* For example, yellow page ads, invoices, letterhead, business cards, pictures of trucks, etc. If you are not immediately putting the mark into use, please let me know. Submit actual samples of use by the date specified below**. The trademark must read exactly as it was given with the correct trademark symbol. Additionally, no extra punctuation may be added, and no words may be changed, added to or deleted from the trademark.

****The following options are available for you to submit the requirements by December 10, 2008:**

E-mail: dschneider@yoursgi.com
Fax: 314-862-2314
Mail: AirTime 500
Denise Schneider
7777 Bonhomme, Suite 1800
Clayton, MO 63105

Best Wishes for Success,

Denise Schneider
Project Traffic Manager
Cc: File



EXHIBIT D

TECHNICIAN SEAL OF SAFETY

License Agreement

AirTime, LLC



This License Agreement ("Agreement") is entered into as of the date indicated below, by and between AirTime, LLC, a Missouri limited liability company, dba AirTime 500 ("AirTime" or "we," "our," or "us"), and the undersigned business entity and/or individual(s) engaged in business (jointly and severally referred to as the "Member" or "you" or "your").

WHEREAS, the trademark noted below (the "Licensed Trademark") is used by AirTime under authority from Clockwork Home Services, Inc., formerly known as VenVest, Incorporated, a Delaware corporation ("Clockwork"); and

WHEREAS, AirTime has the exclusive right to license and/or sublicense the Licensed Trademark; and

WHEREAS, Member, as part of Member's membership in AirTime, desires to use the Licensed Trademark in furtherance of Member's established heating, ventilation and air conditioning contracting business (the "Licensed Business").

NOW THEREFORE, in consideration of the foregoing, the parties do agree as follows:

1. GRANT OF LICENSE, TERM

1.1 Subject to all the terms and conditions of this Agreement, AirTime grants Member a nonexclusive and limited license ("License") to use the Licensed Trademark in connection with Member's Licensed Business but only within in the geographical area stated on Member's Membership Agreement with AirTime ("Membership Agreement") and only in accordance with the other terms and conditions of this Agreement, the Membership Agreement and/or any rules, regulations or interpretations regarding this Agreement and/or the use of the License that AirTime has or may issue.

1.2 If so noted below, the License includes the right to use the Licensed Trademark, in conjunction with the name of the Licensed Business, as noted in this Agreement (or a portion of the full name to be approved in writing in advance by AirTime) must be used in conjunction with the Licensed Trademark.

1.3 Except as otherwise provided in this Agreement, the initial term of this Agreement will be twelve (12) months effective from the date of the execution of Member's AirTime Membership Agreement or the date of the execution of this Agreement (whichever agreement is executed last) and, unless otherwise terminated, automatically renews for one (1) year periods so long as Member continues to be a member of AirTime in good standing. Upon the termination of Member's AirTime membership or Member's breach of this Agreement and/or the Membership Agreement, this Agreement, the License and any rights granted hereunder to Member automatically terminate without further notice. Should the Agreement be terminated by AirTime without any breach of this Agreement and the Membership Agreement on the part of Member, Member has the option of paying a one-time fee equal to double the initial membership fee in AirTime (valued at the time of the exercise of this option by Member) to continue using the Licensed Trademark under this Agreement so long as Member (a) continues to operate the Licensed Business and (b) Member continues to follow all of the other terms and conditions of the Agreement and/or the Membership Agreement that pertain or relate to the Licensed Trademark.

2. OWNERSHIP OF RIGHTS

2.1 Member expressly recognizes and acknowledges that Clockwork exclusively owns all of the right, title and interest in and to the Licensed Trademark. Upon expiration or upon termination of this Agreement and/or the License for any reason, Member shall promptly cease all use of the Licensed Trademark and shall thereafter not use the Licensed Trademark or any related, confusing or colorable simulation of the Licensed Trademark. This Agreement and/or the License does not entitle Member to any interest in or ownership rights to the Licensed Trademark and Member does not have any right or license to use any present or future Licensed Trademark in the promotion or conduct of Member's Licensed Business except as authorized in this Agreement.

2.2 Member shall not use the Licensed Trademark for any purpose other than in connection with the Member's Licensed Business and at no time shall Member use any related, confusing or colorable simulation of the Licensed Trademark for any purpose. Member agrees not to contest or challenge Clockwork's rights to the Licensed Trademark during the term of this Agreement or thereafter. At no time will Member claim any right, title or interest in the Licensed Trademark or other mark or name that may be in any way similar to the Licensed Trademark. Member expressly recognizes that any violation of the terms of this Agreement in regard to the Licensed Trademark, any misuse of the Licensed Trademark and/or the use of any related, confusing or colorable simulation of the Licensed Trademark without AirTime's prior written consent will cause AirTime and Clockwork to suffer irreparable damage and Member agrees that preliminary and permanent injunctive and other equitable relief shall be appropriate to prevent the continuation of such conduct provided that such remedy shall not be exclusive of other legal or equitable remedies as may be available.

3. QUALITY CONTROL

3.1 Member agrees that the services and/or products offered or sold in connection with the Licensed Trademark shall at all times be of a quality consistent with the standards required of Member as a result of Member's membership in AirTime.

3.2 During the term of this Agreement, Member shall submit to AirTime for approval any materials that contain the Licensed Trademark and/or pictures of objects or other personal property that display the Licensed Trademark as actually used and/or permit AirTime to conduct unannounced inspections of Member's premises to enable AirTime to verify that the Member is complying with the standards of this Agreement.

3.3 In the event that AirTime disapproves of any materials or samples submitted or finds inspection results unacceptable pursuant to Section 3.2 and gives Member notice per Section 11, Member shall comply with such instructions as AirTime may provide and shall give satisfactory written notice of such compliance within ten (10) days of its receipt of such instructions.

4. FEES

4.1 Member agrees to pay AirTime a non-refundable, one-time license fee of \$1.00 for the granting of the License pursuant to this Agreement. Additionally, if Member requests that a logo be prepared for Member's use, then Member authorizes that the cost of same may be charged by AirTime to Member's credit card and/or bank ACH debit account on file with AirTime.

5. INDEMNIFICATION, INSURANCE AND COMPLIANCE WITH LAWS

5.1 Member shall indemnify, defend and hold harmless AirTime and Clockwork, along with any affiliates of either, and their respective directors, officers, employees, agents, licensees and their respective independent contractors, from all liability and expense, including attorneys' fees, which arise directly or indirectly from (a) any breach of this Agreement by Member, and/or (b) any claim of or actual use or misuse by Member of the Licensed Trademark, and/or (c) any claim arising out of alleged defective products installed and/or sold and/or services provided by Member and/or any failure to warn on the part of Member and/or (d) any claim of or actual negligent, willful or intentional act or omission of the Member or its directors, officers, agents, employees or independent contractors. This indemnification shall survive the term and/or termination of this Agreement.

5.2 At all times during which Member uses the Licensed Trademark it shall maintain at its own expense, an acceptable policy of liability insurance that will insure (to the extent permitted by law) against the items noted as subsections (a), (b), (c), and (d) in Section 5.1. The policy limit for such liability insurance shall be a minimum of \$1,000,000.00 per occurrence and shall name AirTime and Clockwork as additional insured parties. In addition, such liability insurance policy shall require the insurer to notify AirTime of any modification or termination of the insurance at least twenty (20) days in advance of such modification or termination. Upon request, Member shall furnish to AirTime proof of its insurance coverage.

5.3 Member represents and warrants that Member is and will continue to be during the term of this Agreement in compliance with all local, state and federal laws and regulations governing the operation of Member's Licensed Business. Upon request, Member shall furnish or demonstrate to AirTime appropriate proof of compliance with such laws or regulations.

6. INFRINGEMENTS

6.1 AirTime shall take reasonable steps, in its sole discretion, to protect against infringement of the Licensed Trademark. Member shall have no right or claim against AirTime for any alleged failure to proceed against or inability to prevent any third-party conduct regarding the Licensed Trademark or for any disability, limitation or infirmity in Clockwork's and/or AirTime's right, title and interest in the Licensed Trademark and Member's sole and exclusive remedy in that event is Member's termination of this Agreement.

7. TRADEMARK AND COPYRIGHT REGISTRATIONS

7.1 AirTime shall be responsible for all trademark registrations of any of the Licensed Trademark covered by this Agreement and copyright registrations of all advertising, promotional material and forms provided to Member for its use under this Agreement.

7.2 Member must always use its own business name in association with its use of the Licensed Trademark. Member may not incorporate the Licensed Trademark within or as part of its business name under this Agreement, if applicable. During the term of this Agreement, AirTime may offer to Member the use of additional trademarks for Member's use. Unless the subject of a separate written agreement between Member and AirTime, Member agrees that any additional trademarks granted by AirTime during the term of this Agreement are considered to be and are treated as a Licensed Trademark as defined by this Agreement and are, as such, subject to the terms and conditions of this Agreement.

8. DOMAIN NAME

8.1 AirTime will maintain ownership of the Domain Name.

9. TERMINATION

9.1 This Agreement automatically terminates if any one or more of the following occur:

- (a) Member breaches any curable provisions of this Agreement and such breach has not been fully cured in accordance with AirTime's specifications within ten (10) days after notice of breach has been given pursuant to Section 11;
- (b) Member breaches any non-curable provision of this Agreement;
- (c) Member discontinues or terminates its Licensed Business;
- (d) Member attempts to assign, sublicense or encumber this Agreement, the License, and/or any rights thereunder without AirTime's prior written approval;
- (e) Member's membership in AirTime terminates for any reason and/or at the request of either party;
- (f) Member shall become insolvent, or make any assignment for the benefit of creditors, or shall file any petition under Chapter 7, 10, 11 or 12 of Title 11, United States Code (or any similar law which might be applicable to Member or its business), or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or if any receiver is appointed for its business or property, or if any trustee in bankruptcy or insolvency shall be appointed for it.

9.2 Member may terminate this Agreement by giving AirTime sixty (60) days notice in accordance with Section 11.

10. DISPOSAL OF MATERIAL AND REMOVAL OF LICENSED TRADEMARK UPON TERMINATION OF AGREEMENT

10.1 Upon termination or expiration of this Agreement, Member shall have no further rights to use the Licensed Trademark. In addition to any other instructions given by AirTime, Member shall remove and/or obliterate the Licensed Trademark from any vehicles, uniforms, buildings, signs and/or other property of Member and shall destroy all items, such as but not limited to, forms, advertisements, business cards and the like bearing the Licensed Trademark no later than thirty (30) days of such termination or expiration of the License. Furthermore, Member agrees not to use or reprint any copyrighted material owned by AirTime and/or Clockwork that was furnished to Member for its use during the term of the Agreement and/or the Membership Agreement. Member agrees to allow AirTime or its authorized representative to inspect Member's premises to verify that Member has complied with the provisions of this Section.

10.2 If termination of this Agreement is due solely to Member's voluntary termination of its AirTime membership while it is a member in good standing, Member has the option to continue to use the Licensed Trademark for the remaining term of this Agreement (up to one year) by paying AirTime a weekly fee of \$350 and provided that Member (a) continues to operate the Licensed Business and (b) Member continues to follow all of the other terms and conditions of the Agreement and/or the Membership Agreement that pertain or relate to the Licensed Trademark. The weekly fee shall be payable by credit card or by debiting of Member's bank account and Member must provide AirTime with appropriate documentation regarding the selected payment option when Member exercises its option.

11. NOTICES

All notices to be given under this Agreement shall be given or made at the respective addresses of the parties set forth below, unless notification of a change of address is given in writing. The aforementioned shall be sent by certified mail with a return receipt requested or by overnight express delivery with signature of receipt required and shall be deemed given at the time they are sent.

12. NO JOINT VENTURE OR FRANCHISE

Nothing herein contained shall be construed to place AirTime and Member in the relationship of partners or joint venturers, principal-agent or master-servant, franchiser-franchisee and, except as expressly provided herein, neither shall have any power to obligate or bind the other in any manner whatsoever. Member further acknowledges that this Agreement is not a franchise arrangement nor will Member assert at any time that this relationship is or was a franchise.

13. NO ASSIGNMENT

This Agreement (in whole or in part) and/or any rights granted shall not be assigned, transferred (by operation of law or otherwise), sublicensed or encumbered by Member without the prior written consent of AirTime and any such unauthorized assignment, transfer, sublicense or encumbrance shall be void. AirTime may assign or transfer this Agreement or any rights hereunder to any third party without any requirement of prior notice or consent.

14. NO WAIVER, MODIFICATION, SEVERABILITY

None of the terms of this Agreement can be waived or modified except expressly in writing signed by both parties or their duly authorized agents. The failure of either party to insist on compliance with any provisions shall not constitute a waiver of such provision in the future, or of any other provision at any time. If any provision is held to be invalid or unenforceable by any court of competent jurisdiction or any other authority vested with jurisdiction, such holding shall not affect the validity or enforceability of any other provision of this Agreement.

15. MISCELLANEOUS

15.1 This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms agreed to. No course of prior dealings between the parties and no usage of the trade shall be relevant or admissible to supplement, explain or vary any of the terms to this Agreement. Acceptance of, or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objections. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth in this Agreement.

15.2 The Section and Sub-Section headings of this Agreement are for the convenience of reference only and do not form a part of this Agreement and do not in any way modify, interpret or construe the intentions of the parties.

15.3 This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict of laws principles. Any action arising out of or relating to this Agreement will be brought by the parties only in a Missouri state court or a federal court sitting within Missouri, which will be the exclusive venue of any such action. Each party waives any objection to the laying of venue of any such action, and irrevocably consents and submits to the jurisdiction of any such designated court (and the appropriate appellate courts) in any such action. Service of process and any other notice in any such action will be effective against such party when transmitted in accordance with the notice requirements set forth above. Nothing contained herein will be deemed to affect the right of a party to serve process in any manner permitted by law. **WAIVER OF JURY TRIAL - EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.**

ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.

15.4 If either party to this Agreement breaches or attempts to breach any of the terms hereof, that party shall pay to the non-breaching party upon written demand or as part of a judgment all of the non-breaching party's costs and expenses, including reasonable attorneys' fees, incurred by the non-breaching party in enforcing the terms of this Agreement, whether or not litigation is commenced.

15.5 Following termination of this Agreement and/or the License (for any reason and/or by either party), certain terms, conditions and obligations of this Agreement and any obligations to be performed upon or following any termination of this Agreement and/or the License pursuant to any provision of this Agreement, and any miscellaneous provisions that are relevant to any such obligations, as set forth in this Agreement, will nevertheless survive and continue in full force and effect.

IN WITNESS WHEREOF, the parties have signed this Agreement as of day and year noted below.

LICENSED TRADEMARK.....

TECHNICIAN SEAL OF SAFETY

➔ DATE OF AGREEMENT: 10-2-2008

"MEMBER"

Barnaby Heating & Air, LLC

Print Full Name of Corporation or Limited Liability Company, if applicable

Charles Barnaby

Signature Of Authorized Officer of Corporation or Limited Liability Company

Charles Barnaby
Print Full Name of Authorized Officer of Corporation or Limited Liability Company

Authorized Signature Of Owner Of Business

Print Full Name of Authorized Signature Of Owner Of Business

Authorized Signature Of Co-Owner Of Business

Print Full Name of Authorized Signature Of Co-Owner Of Business

4620 Industrial 1 Street HC
Business Address

Rowlett Tx 75088
City State Zip

"AirTime"

AirTime, LLC

By [Signature]

Authorized Signature

Address:

7777 Bonhomme, Suite 1800

St. Louis, Missouri 63105

Attn: Patty Myers

Phone: 877-862-8181

Facsimile: 314-862-2314

NOTE: The one-time license fee of \$1.00 per year for the granting of this license will be charged to your account on file with AirTime 500, LLC.

insurance expires
11/5/09